

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN WAYNE FONTENOT,

Defendant and Appellant.

A103500

(Contra Costa County
Super. Ct. No. 050213355)

Defendant pleaded no contest to a charge of possession of cocaine base for sale (Health & Saf. Code, § 11351.5).¹ On that and another charge and various enhancements, he was sentenced to a total of five years, eight months in state prison. He now appeals, challenging the pretrial rulings denying his request to unseal the search warrant affidavit and to traverse/quash the warrant. We find no error and affirm.

BACKGROUND

On March 27, 2002, Contra Costa Superior Court Judge Peter Berger signed a search warrant for defendant's person and vehicle, and for a garage located at 1341A

¹ Defendant was originally charged with this offense, as well as evading a police officer (Veh. Code, § 2800.2, subd. (a)) and various enhancements. The case proceeded to jury trial and defendant was convicted of the evading charge; the jury was unable to reach a verdict on the possession charge. Defendant subsequently pleaded no contest to the possession charge, in return for an indicated total sentence of no more than five years and eight months.

Garvin Avenue in Richmond. Judge Berger ordered the statement of probable cause/affidavit to be sealed in order to protect the identity of the confidential informants. Defendant subsequently filed a motion to unseal the search warrant and another motion to quash the search warrant and traverse the probable cause showing. At the hearing on these motions, Judge Berger reviewed the warrant and affidavit; portions of the affidavit were ordered unsealed. Defendant requested that the remaining portions be unsealed; this request was denied. The remainder of defendant's motions were denied. After the information was filed in superior court, defendant filed a motion to review the magistrate's order for limited unsealing of the affidavit, and renewed his motion to quash and traverse the search warrant. These motions were denied. Defendant was subsequently convicted and now appeals, alleging that the denial of these motions by the trial court was error.

DISCUSSION

Both parties agree that this court should review the search warrant affidavit and the warrant and application, in order to determine if defendant's motions to unseal the entire affidavit and to traverse and quash, were properly denied. To this end, we ordered transmitted to this court the search warrant, the application, and the sealed affidavit/statement of probable cause for review.² We have reviewed the entire warrant and application, including the sealed and unsealed portions of the affidavit/statement of probable cause, pursuant to *People v. Hobbs* (1994) 7 Cal.4th 948. We have also reviewed the sealed transcript of the motion and in camera hearing before Judge Berger.

The procedure set forth in *People v. Hobbs, supra*, 7 Cal.4th 948 requires that the trial court review the documents in question in camera. Under this procedure, "[i]t must first be determined whether sufficient grounds exist for maintaining the confidentiality of the informant's identity. It should then be determined whether the entirety of the

² None of these items was included in the record on appeal. They were ordered transmitted pursuant to California Rules of Court, rule 18(d).

affidavit or any major portion thereof is properly sealed, i.e., whether the extent of the sealing is necessary to avoid revealing the informant's identity.” (*Id.* at p. 972.) If the court finds the affidavit, or portions of it, were properly sealed, it must then turn to the motion to quash and determine if the affidavit or any other related materials furnish probable cause for the issuance of the warrant, under the standard set forth in *Illinois v. Gates* (1983) 462 U.S. 213.

In determining whether probable cause exists, the magistrate looks at the totality of the circumstances set forth in the affidavit. Based upon that information, if there is a fair probability that contraband or evidence of a crime will be found in the location to be searched under the warrant, the probable cause requirement has been met. The reviewing court gives strong deference to the determination of the magistrate and if there is a substantial basis for the magistrate's determination that probable cause exists, it shall be affirmed. (*Illinois v. Gates, supra*, 462 U.S. 213 at p. 236.)

Here the trial court properly followed the procedures set forth in *Hobbs*. The magistrate who initially reviewed the affidavit in camera examined it carefully to determine which portions might be unsealed without revealing the identity of the informants.³ Portions of the statement of probable cause were at that point ordered

³ On appeal, much of defendant's argument regarding unsealing the affidavit rests upon an apparent belief that only the actual names of the informants need be redacted in order to protect their identities. We disagree. Any information that could reasonably lead to the determination of the informants' identities is properly sealed. (See *People v. Hobbs, supra*, 7 Cal.4th 948 at p. 966, quoting from *People v. Seibel* (1990) 219 Cal.App.3d 1279, 1297, italics added [“ ‘It follows . . . that a sealing of virtually all of an affidavit, as occurred in the case at bench, is permissible if the necessity requirement is met. The question of how much may be sealed simply is one of degree,’ ”] and [“the informant's privilege (§ 1041), the long-standing rule extending coverage of that privilege to information furnished by the informant which, if disclosed, might reveal his or her identity, and the codified rule that disclosure of an informant's identity is not required to establish the legality of a search pursuant to a warrant valid on its face (§ 1042, subd. (b)) compel a conclusion that *all or any part of a search warrant affidavit may be sealed if necessary to implement the privilege and protect the identity of a confidential informant.*”] (*People v. Hobbs, supra*, 7 Cal 4th 948 at p. 971, italics added.))

unsealed; others remained sealed. The magistrate then determined that probable cause justified the issuance of the warrant. When these motions were renewed in superior court, a different judge again reviewed all relevant materials including the transcript of the in camera hearing before the magistrate and determined that no further information in the affidavit should be unsealed and that probable cause supported the issuance of the warrant.

We have independently reviewed the relevant documents and agree with the lower court's determinations. No further portions of the affidavit/statement of probable cause should be ordered unsealed, as such unsealing could reasonably lead to the identification of the informants. Reviewing the affidavit/statement of probable cause, there was a substantial basis for the trial court's determination that there was a fair probability that contraband or evidence of a crime would be located at the location to be searched. The trial court did not err in denying defendant's motions to unseal the entire affidavit and to traverse/quash the warrant.

DISPOSITION

The judgment is affirmed.

Sepulveda, J.

We concur:

Kay, P.J.

Rivera, J.